be put on the ground of subrogation. There is no payment of the mortgage debt, for no one could pay it but the mortgagor. But to have subrogation it is necessary that the debt should be extinguished at law. The right must, therefore, be put upon some other ground.

It is said that a contract of insurance is a contract of indemnity, and that the company here has agreed to insure the defendant against loss upon his debt; and that practically the only way of adjusting such a loss is the method here proposed by the company. It seems, however, a conclusive answer to this, that the parties never contemplated insuring the debt, nor would the company, probably, have authority to insure a debt. The defendant was insured against the loss of certain property; and it is for such loss that the company must pay. *Excelsior Ins. Co.* v. *Royal Ins. Co.*, 55 N. Y. 343. If the debt had been the thing insured it would be necessary to find in each case how much the mortgagor's ability to pay the debt had been lessened by the fire; and that would be the measure of damages on the policy. Such, however, is not the course pursued.

In fact, the debt has nothing to do with the case. The defendant acquired his interest in the premises through the mortgage deed; and that instrument alone, not the mortgage debt, concerns this case. By the deed the defendant acquired an insurable interest in the property, equal, even in equity, to the amount of the mortgage debt. It is for the loss that has happened to *his* property that he recovers, and the company, having paid only what it agreed to pay, has no equity to claim the debt, and thus to deprive the defendant of the profits of his investment. (Bunyon, Insurance, 3d ed., p. 243.) If any one has an equity to have the insurance money applied in payment of the debt it is the mortgagor, not the company; and this equity would arise only upon maturity of the debt. The defendant had a right to recover the insurance money, and he has now a right to hold both the money and the debt. This right is recognized by the best late authorities. Wood, Insurance, p. 782; *Insurance Co.* v. *Boyden*, 9 All. 123; *King* v. *Insurance Co.*, 7 Cush. 1.

FROM THE LECTURE ROOM.

These notes were taken by students from lectures delivered as part of the regular course of instruction in the school. They represent, therefore, no carefully formulated statements of doctrine, but only such informal expressions of opinion as are usually put forward in the class-room. For the form of these notes the lecturers are not responsible.

WRONGFUL CONVERSION OF A TRUST FUND. RIGHTS OF THE BENEFICIARY. — (*From Professor Ames' Lectures.*) — Where a trust fund is misappropriated and converted into other property, the delinquent fiduciary may be charged as a constructive trustee of the newly acquired property.[1]

If, however, the defrauded *cestui que trust* cannot trace the trust fund, directly or indirectly, into any specific property or fund, the trust, for want of a *res* to which it can attach, is extinguished, and the *cestui que trust* becomes a creditor.[2]

But, although the trust is gone, the circumstances may be such as to give the defrauded *cestui que trust* the position of a preferred

[1] Ames, Cas. on Trusts, 321, 325 n. 1.

[2] Ames, Cas. on Trusts, 331, 332 n. 1.

creditor. If, for instance, the fiduciary becomes bankrupt, and it appears that the fund for distribution among his creditors has been increased by the misapplication of the trust fund, it is obviously inequitable that the other creditors should derive any advantage from such increase. In other words, they ought not to be permitted unjustly to enrich themselves at the expense of the innocent *cestui que trust*. The latter's right to a preference has, accordingly, been recognized in several cases.[1]

CONSIDERATION VOID IN PART. — (*From the lectures of Prof. Keener.*)—Under the doctrine of consideration void in part, the offeree may, if he finds among the things requested by the offerer in exchange for his promise, that which is in itself or in law impossible of performance (*Cripps* v. *Golding*, 1 Rolle's Abr. 30), or that which if standing alone would not be sufficient as a consideration (*Crisp* v. *Gammel*, Cro. Jac. 128), disregard the terms of the offer, and on his doing what remains, the offerer will be bound.

This doctrine cannot be supported on principle.

The objection to it is not that it violates any principle of the law of consideration, but that it violates the fundamental principle of the doctrine of mutual consent. The law recognizes in general the right of the offerer to propose the terms on which he will be bound. When one offers to become bound on another's doing certain things, the doing of those things is as much a condition precedent to the creation of an obligation as the doing of them would be a condition precedent to the creation of a liability, if, instead of making an offer, the party had covenanted to do certain things on the covenantee's doing the things in question.

The true doctrine would seem to be that while the offer will not ripen into a promise until the offeree has done all that the offerer requested him to do, yet, when all has been done, it is no defence for the promisor to say that some of the things done were insufficient in point of consideration.

To satisfy the fundamental principle of mutual consent, all must be done that the offerer requests.

The law of consideration is satisfied if, in doing those things, the offeree has, because of the doing of any one of them, suffered a detriment at the promisor's request in exchange for his promise.

EQUITY, SPECIFIC PERFORMANCE, MUTUALITY OF REMEDY. — (*From Prof. Langdell's Lectures.*) — The rule as to mutuality of remedy is obscure in principle and in extent, artificial, and difficult to understand and to remember. The rule is entirely one of remedy; that the remedy by specific performance must be mutual.

The rule assumes that the contract is bilateral. It does not mean that there may not be specific performance of a unilateral contract. There may be performance of such a contract; for instance, of a covenant to convey land, made upon good consideration. From the terms of the rule it is assumed that the contract itself is mutual, that is, bilateral;

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[1] Peak *v.* Ellicott, 30 Kas. 156; Ellicott *v.* Brown, 31 Kas. 170; Harrison *v.* Smith, 83 Mo. 210 (overruling Mills *v.* Post, 76 Mo. 426); People *v.* City Bank, 96 N. Y. 32; People *v.* Dansville Bank, 39 Hun, 187; McColl *v.* Fraser, 40 Hun, 111 (semble); McLeod *v.* Evans, 66 Wis. 401.

But see, *contra*, White *v.* Jones, 6 N. B. R. 175; Re Hosie, 7 N. B. R. 601 (semble); Re Coan Co. 12 N. B. R. 203; Illinois Bank *v.* First Bank, 15 Fed. Rep. 858.